

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1

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In Re:

ROSA MARIA STYLES,

Debtor.

Chapter: 11

Case No. 19-32881 (ABA)

Judge: Andrew B. Altenburg, Jr.

Adv. No.: 20-01226

ROSA MARIA STYLES

Plaintiff,

v.

CEBV, LLC,

Defendant.

**STIPULATION AND CONSENT ORDER RESOLVING CEBV, LLC'S
CLAIM AND ROSA MARIA STYLES' ADVERSARY PROCEEDING**

The relief set forth on the following pages, numbered two (2) through eleven (11), is hereby

ORDERED.

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Debtor: Rosa Maria Styles
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Caption of the Order: STIPULATION AND CONSENT ORDER RESOLVING CEBV, LLC's CLAIM AND ROSA MARIA STYLES' ADVERSARY PROCEEDING

WHEREAS, on September 17, 2018 the Debtor Rosa Maria Styles (the "Debtor") filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, captioned as *In re Rosa Styles*, Case No. 18-28533-ABA (the "First Bankruptcy Case");

WHEREAS, on November 6, 2018, the Bankruptcy Court entered an order converting the Debtor's First Bankruptcy Case to a case proceeding under Chapter 11 of the Bankruptcy Code;

WHEREAS, on April 1, 2019, the Debtor filed a Motion for Voluntary Dismissal of the First Bankruptcy Case, therein seeking a dismissal on the basis that she no longer needed the protection of the Bankruptcy Court because she was confident that she could resolve outstanding issues with the mortgages on her home;

WHEREAS, on April 16, 2019, the Bankruptcy Court entered an Order granting the Debtor's Motion for Voluntary Dismissal of the First Bankruptcy Case;

WHEREAS, on August 15, 2019, CEBV, LLC ("CEBV") filed a complaint against Robert Schwartz ("Schwartz") and the Debtor in the Superior Court of New Jersey, Gloucester County, Docket No. GLO-L-000991-19, seeking monetary damages for breaches of contract under a promissory note and guaranty ("Complaint"). A true and correct copy of this Complaint is incorporated herein by reference.

WHEREAS, on December 9, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court District of New Jersey (the "Bankruptcy Court") (the "Second Bankruptcy Case");

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WHEREAS, CEBV asserts that prior to the Petition Date, the Debtor and Robert Schwartz made, executed and delivered to CEBV that certain Promissory Note, effective May 8, 2018 (the “Promissory Note”), in the original principal amount of \$2,941,274.00 (the “Loan”);

WHEREAS, CEBV asserts that in order to secure the Debtor and Schwartz’s obligations under the Promissory Note, on May 24, 2018, the Debtor made, executed and delivered to CEBV that certain Mortgage, dated as of May 24, 2018, and made effective as of May 8, 2018 (the “2018 CEBV Avalon Mortgage”), encumbering certain real property located in the Municipality of Avalon, in part of Block 11.02, Lots 9.01 and 9.02, designated as 43 W. 12th Street, Avalon, NJ 08202 (the “Avalon Property”), as more particularly described in the 2018 CEBV Avalon Mortgage. A true and correct copy of the 2018 CEBV Avalon Mortgage is incorporated herein by reference;

WHEREAS, CEBV asserts that in order to further secure the Debtor and Schwartz’s obligations under the Promissory Note, on May 24th, 2018, the Debtor made, executed and delivered to CEBV that certain Mortgage, dated as of May 24, 2018, and made effective as of May 8, 2018 (the “2018 CEBV Sewell Mortgage”), encumbering certain real property located in the Municipality of Washington Township, in part of Block 82.52, Lot 37, designated as 61 Hartford Road, Sewell, NJ 08080 (the “Sewell Property”), as more particularly described in the 2018 CEBV Sewell Mortgage. A true and correct copy of the 2018 CEBV Sewell Mortgage is incorporated herein by reference;

WHEREAS, CEBV asserts that in order to further secure the Debtor and Schwartz’s obligations under the Promissory Note, and the obligations of others under their promissory notes, the Debtor and Schwartz made, executed, and delivered to CEBV that certain Guaranty, effective

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May 8, 2018 (the “Guaranty”), therein absolutely and unconditionally guarantying (i) payment in full of all amounts due under that certain Promissory Note, effective May 8, 2018 (the “Rodriguez Promissory Note”), made and executed by Rennie Rodriguez and Kelley Rodriguez (collectively, the “Rodriguez Borrower”), and delivered to CEBV in the original principal amount of \$2,049,658.00 (the “Rodriguez Loan”); and (ii) that certain Promissory Note, effective May 8, 2018 (the “Hogg Promissory Note”), made and executed by Chris Hogg and Joanne Hogg (collectively, the “Hogg Borrower”), and delivered to CEBV in the original principal amount of \$10,078,808.00 (the “Hogg Loan”). A true and correct copy of the Guaranty is incorporated herein by reference;

WHEREAS, On January 29, 2020, CEBV filed Proof of Claim No. 3. (the “Proof of Claim”), asserting a claim secured by the 2018 CEBV Avalon Mortgage and the 2018 CEBV Sewell Mortgage in the amount of \$2,941,271.00 (the “Secured Claim”), and an unsecured claim under the Guaranty in the amount of \$14,500,137.54 (the “Unsecured Claim” and collectively with the Secured Claim, the “Claim”). A true and correct copy of the Proof of Claim is incorporated herein by reference;

WHEREAS, pursuant to 11 U.S.C. § 502, CEBV’s Claim is deemed allowed unless a party in interest objects. See 11 U.S.C. § 502(a). As of the date hereon, no objection has been filed to CEBV’s Claim. As such, pursuant to 11 U.S.C. § 502, CEBV’s filed Secured Claim against the Avalon Property and Sewell Property, and Unsecured Claim are deemed allowed. See 11 U.S.C. § 502(a).

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WHEREAS, on February 24, 2020, the Debtor filed a Motion seeking approval of the Sale of the Avalon Property to Buyers, for the purchase price of \$2,995,000.00 (the "Sale Motion") [D.I. 42].

WHEREAS, the following mortgages and judgments are recorded against the Avalon Property:

- a. A Mortgage, made and executed by the Debtor, and delivered to Thomas J. Welsh Jr., dated June 22, 2017, recorded June 27, 2017 in the Cape May County Clerk's/Register's Office in Mortgage Book 5879, Page 462, in the amount of \$1,550,000.00 (the "Welsh First Mortgage");
- b. A Mortgage, made and executed by the Debtor, and delivered to Thomas J. Welsh Jr., dated June 22, 2017, recorded August 25, 2017, in the Cape May County Clerk's/Register's Office in Mortgage Book 5895, Page 711, in the amount of \$500,000.00 (the "Welsh Second Mortgage"; and together with the Welsh First Mortgage, collectively, the "Welsh Mortgages");
- c. The 2018 CEBV Avalon Mortgage, made and executed by the Debtor, and delivered to CEBV, dated May 24, 2018, and recorded June 6, 2018, in the Cape May County Clerk's Register's Office in Mortgage Book 5975, Page 624, showing an amount of \$15,069,739.75;
- d. Capital One Bank (USA), N.A. v. Rosa Styles, Judgment Number DJ-054721-2010, docketed on February 24, 2010 for \$3,735.75, plus interest and cost; and
- e. Capital One Bank (USA), N.A. v. Rosa Styles, Judgment Number DJ-196733-2010, docketed on August 2, 2010 for \$3,953.92, plus interest and cost.

(Collectively, the "Mortgages and Judgments").

WHEREAS, the aggregate amount of the Mortgages & Judgments encumbering the Avalon Property is \$17,127,429.42;

WHEREAS, CEBV filed an Objection to Debtor's Motion for Authorization to Sell Real Estate on March 17, 2020 (the "Objection") [D.I. 58]. A true and correct copy of the Objection is incorporated herein by reference.

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WHEREAS, on April 20, 2020, the Debtor initiated an adversary proceeding to determine the nature, extent and validity of CEBV's liens and for other relief (Adversary Proceeding Docket No. 20-01226 (the "Adversary Proceeding")).

WHEREAS, the Debtor and CEBV (each a "Party" and together the "Parties") have engaged in extensive negotiations and settlement discussions to resolve CEBV's Proof of Claim and the Debtor's Adversary Proceeding, and any other claims or theories for relief asserted by the Parties during said negotiations, which resulted in their execution of this stipulation and consent order, subject to the approval of the Bankruptcy Court (the "Agreement");

WHEREAS, at the closing of the sale of the Avalon Property, the Parties have agreed that the purchase price for the Avalon Property shall be paid first to satisfy the Welsh Mortgages and to pay the bankruptcy fee, the trustee fee, past-due electrical charges and customary real estate commissions, real estate transfer tax, escrow fees, recording fees and title company fees, and thereafter \$450,000.00 shall be paid to CEBV. For the avoidance of doubt, the cost to satisfy judgments, liens, past-due real estate taxes and assessments and any other monetary encumbrances against the Avalon Property aside from the Welsh Mortgages shall be paid out of pocket by Debtor at the closing of the sale of the Avalon Property and shall not be paid from the sale proceeds or otherwise reduce the \$450,000.00 due to CEBV; and

WHEREAS, the Parties wish to resolve their disputes, and facilitate the resolution of Debtor's Second Bankruptcy Case, CEBV's Proof of Claim, and the Debtor's Adversary Proceeding, without the burden and cost of time-consuming contested proceedings.

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED AND SO ORDERED AS FOLLOWS:

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Debtor:

Rosa Maria Styles

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Caption of the Order:

STIPULATION AND CONSENT ORDER RESOLVING CEBV, LLC's CLAIM AND
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1. This Agreement shall only be effective on the first date on which it is fully executed by the Parties and on which an order approving its terms has been entered by the Court (the "Effective Date"). If this Agreement is not approved by the Bankruptcy Court, this Agreement shall be null and void and made without prejudice to either party.

2. The Debtor shall pay, or cause to be paid, to CEBV \$450,000.00 (the "Settlement Amount"), which Settlement Amount shall be secured by a note and mortgages on the Avalon Property and the Sewell Property with a corresponding guaranty from Schwartz, copies of which are attached hereto and incorporated herein by reference as Exhibit A (the "2020 CEBV Note"), Exhibit B (the "2020 CEBV Avalon Mortgage"), Exhibit C (the "2020 CEBV Sewell Mortgage") and Exhibit D (the "2020 Schwartz Guaranty"). Styles represents that no mortgages have been executed and/or recorded against the Avalon Property or the Sewell Property since the Petition Date and none will be executed and/or recorded against the Avalon Property or the Sewell Property aside from the 2020 CEBV Avalon Mortgage and the 2020 CEBV Sewell Mortgage without the consent of CEBV. Styles understands and agrees that CEBV will not discharge its 2018 CEBV Avalon Mortgage and 2018 CEBV Sewell Mortgage until it receives the Settlement Amount so as to preserve its priority through those recording dates. Payment shall be made as provided in Paragraph 5 herein.

3. Debtor understands and agrees that neither this Agreement, nor any of the 2020 CEBV Note, the 2020 CEBV Avalon Mortgage, the 2020 CEBV Sewell Mortgage and/or the 2020 Schwartz Guaranty (collectively, the "2020 Security Documents") shall be construed as a novation of the Promissory Note, the 2018 CEBV Avalon Mortgage, the 2018 CEBV Sewell Mortgage and/or the Guaranty and shall not prejudice any present or future rights, remedies, benefits or

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powers belonging to or accruing to CEBV under the terms of the Promissory Note, the 2018 CEBV Avalon Mortgage, the 2018 CEBV Sewell Mortgage and/or the Guaranty. It is the intent of the parties hereto that the 2020 Security Documents shall in no way adversely affect or impair the lien priority of the 2018 CEBV Avalon Mortgage and/or the 2018 CEBV Sewell Mortgage. In the event any one or more of the 2020 Security Documents or any part thereof, or any instrument executed in connection therewith, shall be construed or shall operate to affect the lien priority of the 2018 CEBV Avalon Mortgage and/or the 2018 CEBV Sewell Mortgage, then to the extent such instrument creates a charge upon the Avalon Property and/or the Sewell Property, and to the extent third parties acquiring an interest or lien upon the Avalon Property and/or the Sewell Property between the time the 2018 CEBV Avalon Mortgage and/or the 2018 CEBV Sewell Mortgage was recorded and the time the 2020 CEBV Avalon Mortgage and/or the 2020 CEBV Sewell Mortgage are recorded are prejudiced thereby, the 2020 Security Documents shall be void and of no further force or effect. Notwithstanding the foregoing, the parties hereto, as between themselves, shall be bound by all the terms and conditions of 2020 Security Documents until the Settlement Amount and all interest thereon has been paid in full.

4. The Debtor agrees to use her best efforts to resurrect the sale of the Avalon Property to the interested buyers as identified in the prior motion and if that is impossible, she will promptly re-list the Avalon Property. If the Debtor's agent cannot secure a sale of the Avalon Property during the term of its current listing, CEBV can select a qualified local agent of its choice to list the Avalon Property; subject to the consent of the Debtor, which consent shall not be unreasonably withheld.

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5. The Settlement Amount shall be paid to CEBV at the time of closing on the sale of the Avalon Property. If the sale of the Avalon Property does not yield \$450,000.00 in cash to pay CEBV, then the Debtor and Schwartz shall pay the remaining balance to CEBV at the closing of the sale of the Avalon Property so that the payment to CEBV at closing shall total \$450,000.00. The Settlement Amount will be paid to CEBV regardless of how the Avalon Property is sold, i.e., arms-length transaction, sheriff's sale, etc.

6. Upon receipt of full payment of the Settlement Amount, and subject to the occurrence of the Effective Date, CEBV releases and discharges the Debtor from any and all claims and causes of action, including, but not limited to, any claims pursuant to 11 U.S.C. § 502(h), and any scheduled claims of CEBV not included as originally filed or as amended by this Order. The release also includes any and all claims and causes of action which are, or could have been, set forth against the Debtor, only in the Superior Court of New Jersey in CEBV, LLC v. Rosa Styles under Docket No. GLO-L-991-19. Nothing herein shall be deemed to release or discharge any obligations of the Debtor under this Agreement.

7. Upon the Effective Date, the Debtor unconditionally releases and forever discharges CEBV and its past and present officers, directors, employees, shareholders, agents, attorneys, consultants, financial advisors, predecessors, subsidiaries, affiliates, successors and assigns, and each of them, separately and collectively, from any and all claims, losses, demands, actions or causes of action, liabilities, debts, damages, controversies, and claims of any nature whatsoever, whether in law or equity, whether known or unknown, that the Debtor or the Debtor's estate has now or may have against CEBV.

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8. The Parties agree that this Agreement is a compromise and settlement and shall not be construed as an admission of liability, wrongdoing, or responsibility on the part of any Party.

9. In the event of any ambiguity or question of intent or interpretation, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

10. This Agreement shall be binding on and shall inure to the benefit of the Parties, and any successors in interests, assignees, trustees, examiners, agents, and representatives.

11. This Agreement shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of New Jersey, without regard to New Jersey's rules regarding conflicts of laws.

12. The Adversary Proceeding is hereby dismissed, with prejudice.

13. Each Party shall bear its own costs, fees and expenses relating to this matter.

14. The Bankruptcy Court for the District of New Jersey shall have exclusive jurisdiction to adjudicate matters arising under or in connection with this Agreement.

15. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Agreement.

16. This Agreement contains the entire agreement between the Parties and can only be modified by a writing signed by the Parties.

17. Each of the undersigned counsel hereby covenants, warrants and represents that he/she is fully authorized to execute this Agreement on behalf of the party he/she represents and is fully authorized to bind that party to all of the terms of this Agreement.

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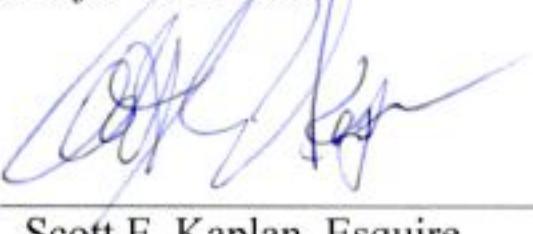
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18. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered (including by facsimile or email transmission) shall be, and have the force and effect of an original, and all of which together shall constitute one and the same Agreement.

ACCEPTED AND AGREED:

SCOTT E. KAPLAN, LLC

Counsel for the Debtor

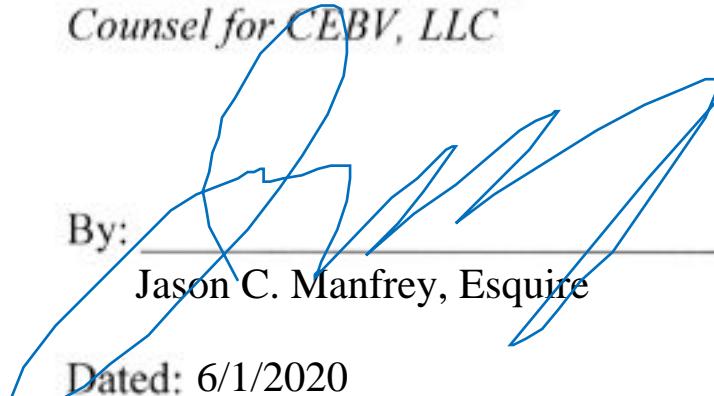
By: 

Scott E. Kaplan, Esquire

Dated: 

FOX ROTHSCHILD LLP

Counsel for CEBV, LLC

By: 

Jason C. Manfrey, Esquire

Dated: 6/1/2020